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No. 922

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In the Supreme Court of the United States

OCTOBER TERM, 1964

PETER T. SIOPES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a veteran's preference eligible, was a civilian employee of the Department of the Navy holding a supervisory position. The Navy, after advising him of the charges and affording him a hearing with the assistance of counsel, removed him on August 23, 1957, for conduct unbecoming a supervisor and a federal employee. After another hearing before the Civil Service Commission, at which petitioner again had the benefit of counsel, the Twelfth United States Civil Service Region sustained the re-

moval (Deft's Ex. 5), and, by letter dated April 29, 1958, the Commission's Board of Appeals and Review affirmed (Deft's Ex. 6). Petitioner thereafter made two applications to the Board of Appeals and Review for reconsideration, which were denied by letters dated December 12, 1958, and March 1, 1960. These letters advised petitioner that he had exhausted his administrative remedies (Deft's Exs. 7 and 8).

Petitioner, on October 4, 1961, almost three and one-half years after affirmance of his removal by the Board of Appeals and Review, brought this action below for recovery of lost salary on the allegation of wrongful removal. The Court of Claims suspended proceedings pending the outcome of an identical claim petitioner subsequently filed in the United States District Court for the District of Columbia, which was dismissed for laches in an unreported decision. *Siopes* v. *Korth*, Civ. No. 2039-62, decided October 9, 1963 (Deft's Ex. 9).[1] Thereafter, on October 23, 1964, the Court of Claims granted the goverment's motion for summary judgment on the ground of laches and dismissed petitioner's suit (App., *infra*, p. 4).[2]

The application of the doctrine of laches to suits for back pay grounded upon an allegation of an illegal removal is well settled. *Arant* v. *Lane*, 249 U.S. 367; *Miner* v. *United States*, 143 Ct. Cl. 801; cf. *Norris* v. *United States*, 257 U.S. 77. The application of that

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[1] Petitioner elected not to appeal from this decision.

[2] On January 14, 1965, the Chief Justice granted petitioner's application to extend the time for filing a petition for a writ of certiorari to February 20, 1965. The petition was filed on February 19, 1965.

doctrine to the particular facts of this case is not a matter of general importance. In addition, the holding below is plainly justified. Petitioner's time to sue began to run on April 29, 1958, when the Board of Appeals and Review affirmed his removal and was not tolled by applications for rehearing. See *Bailey* v. *United States*, 171 F. Supp. 281 (Ct. Cl.). And "letters to various administrative officials do not excuse [or mitigate] his delay [of almost three and one-half years] in bringing suit." *Jones* v. *Summerfield*, 265 F. 2d 124, 125 (C.A.D.C.), certiorari denied, 361 U.S. 841.

We respectfully submit that the petition should be denied.

ARCHIBALD COX,
Solicitor General.

MARCH 1965

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 395-61

PETER T. SIOPES

v.

THE UNITED STATES

ORDER

This case comes before the court on defendant's motion for summary judgment. Upon consideration thereof, together with the opposition thereto, and without oral argument, it is concluded on the basis of *Bovard* v. *United States*, No. 241-60, decided February 6, 1963, that plaintiff is not entitled to recover, and

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted and plaintiff's petition is dismissed.

BY THE COURT

/s/ Wilson Cowen
WILSON COWEN
Chief Judge

October 23, 1964

Judge Collins took no part in the consideration and decision of this case.

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